



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

DAVID FARRELL SULLIVAN §
§
Plaintiff, §
§
vs. § CIVIL ACTION NO. 6:05-1282-HFF-WMC
§
COUNTY OF SPARTANBURG et al., §
§
Defendants. §

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE
JUDGE AND DISMISSING THE ACTION *WITHOUT PREJUDICE*

This is a Section 1983 action. Plaintiff is proceeding *pro se*. The matter is before the Court for review of the United States Magistrate Judge's report and recommendation (report) in which he suggests that this action be dismissed *without prejudice* (to preserve Plaintiff's claims under South Carolina law) and that the dismissal be deemed a "strike" for purposes of 28 U.S.C. § 1915(g). The report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 DSC.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Magistrate Judge William M. Catoe filed his report on May 10, 2005. Plaintiff mailed his nineteen page objection memorandum to the Clerk of Court on May 26, 2005.

In reviewing Plaintiff's objections, the Court observes that they are not really objections at all, but instead an argument of Plaintiff's case. In the interest of justice, however, and an abundance of caution, the Court has made a *de novo* review of the report. Simply stated, the arguments that Plaintiff puts forth in his objection memorandum are without merit. Thus, for the reasons stated by the Magistrate Judge in his well-reasoned report, the Court will dismiss this action.

Therefore, after a thorough review of the report and the objections pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the report and incorporates it herein. Accordingly it is the judgment of this Court that this action be **DISMISSED** *without prejudice* (to preserve Plaintiff's claims under South Carolina law) and that the dismissal be deemed a "strike" for purposes of 28 U.S.C. § 1915(g). All remaining pending motions are rendered **MOOT**.

IT IS SO ORDERED.

Signed this 7th day of December, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has a right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.